

Committee on Resources

Subcommittee on Energy & Mineral Resources

Statement

The World Heritage Committee and the New No-mining Policy: An Instrument of Manipulation, Mischief and Mal-administration

**Testimony
of
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**Subcommittee on Energy and Mineral Resources
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Chairperson Cubin, members of the committee, I am Richard L. Lawson, the president of the National Mining Association. Our members are the enterprises that deliver to public use most of the basic material resources required to uphold and strengthen America in daily life - the miners and producers of coal, metals and useful minerals; and the manufacturers of their equipment; and the suppliers of goods and services.

This committee is performing a public service of the first order in bringing into first public knowledge and into its only open discussion an international policy proposal of national and global importance.

The governing apparatus of the World Heritage Convention of the United Nations is poised as you hear me today to take up next month a no-mining policy.

Yet until this moment the policy scarcely could have been moved forward with less notice had stealth and stratagem been the principal implementing strategy of its proponents.

The United States and other signatories will be pressured intensely to use it vigorously in the guise of further protecting already protected areas by ever-widening areas of control. The argument of moral obligation will be made.

Indeed, some recent mine-related interpretations of policy in the Department of the Interior seem outwardly to conform to the international proposal, including the new policy directive on millsites.

Yet the scope, intent and origins of the convention's no-mining policy have yet to be submitted by the moving parties for public examination. They have not been explained or justified as representative democracy requires - not so much as mentioned by participant agencies of the U.S. government.

The U.S. contains a major portion of the world's mineable resources, a major share of the world's natural sites with a Heritage designation, and a major number of the areas categorized for protection in the world - well over 1,800 in all. U.N. documents list about 426,000 square miles of the U.S. as so protected.

The U.S. mining industry is a major producer and major participant in world markets for most of the material resources and energy required to uphold modern life. It is the world's most efficient and the most technologically adept at environmental protection and remediation. Such a policy would affect present and future output.

Yet the U.S. mining industry has been neither advised nor consulted nor offered the opportunity to participate in the activities that led to this point:

- Not by the convention or the governing committee;
- Not by the committee's bureau nor the affiliate from which the policy comes, the International Union for the Conservation of Nature;
- Not by the U.S. Department of State, which takes a bystander's role;
- And not by the U.S. Department of the Interior as a result either of U.S. participation in the convention's governing apparatus or its membership participation in the International Union for the Conservation of Nature, called the IUCN.

Indeed, the IUCN's posted criteria specifically exclude from membership and participation any entities it adjudges not in accord with its beliefs and objectives. Admitted to IUCN participation are such as the World Resources Institute, the Natural Resources Defense Council, the Environmental Defense Fund, the Sierra Club, the Defenders of Wildlife and the World Wildlife Fund.

It is true that the World Heritage Convention cannot require compliance. It is equally true that organizations of the kind I just mentioned are likely to wage campaigns of pressure and opinion and, possibly, litigation to make no-mining a formal policy. It will be wielded as a weapon when a mine is proposed.

The danger is that a no-mining policy quickly will be made to function as the following:

- As a *de facto* and acquiesced-to obligation of the Government of the United States - a moral obligation;
- As a policy, even though it has not been authorized by any act of the Congress of the United States;
- As a sanctioned regulatory practice, even though imposed in ways and by means that ignore the universally accepted practices of good government as set down in the Administrative Procedures Act;
- As the regulatory equivalent of a law even though there can be no proper judicial review or appeal as provided for by the Constitution;
- And finally, it will be used and abused in campaigns to nullify and override by intimidation and the distortion of opinion the proper decisions of duly elected, representative governments - local, state, and federal.

The ultimate results of a no-mining policy may well include:

- The needless removal of vast resources from public use and benefit - a crude kind of rationing;
- Higher prices than necessary for energy, goods and services;
- Distortion of world markets for energy and material resources;
- Strains on the national and global economic security;
- And increased demands for the commitment of U.S. National Security forces to keep world affairs stable.

In sum: The World Heritage Committee's no-mining policy is an instrument of manipulation, mischief and mal-administration.

I urge you to do all in your power to ensure that it falls back into the mists of vagueness and obscurity from which it arose.

It shows cause for the enactment of the American Land Sovereignty Act before the 106th Congress adjourns.

And it suggests the Congress could constructively inquire into the functions and the relationships of the IUCN and the Department of the Interior and the groups such as those named. The written testimony touches on this in more detail.

Thank you for your attention.

The written testimony will proceed as follows:

- Section 1: The Origins and the Originators of the No Mining Policy;
- Section 2: The Policy's Potential for Manipulation, Mischief and Mal-administration;
- Section 3: Has Anybody Asked the Secretary of the Interior What He Thinks?;
- Section 4: Due Process of What?...The Dangers of Single-Concern Policies.

1. The Origins and Originators of the No-mining Policy:

The bureaucratic apparatus and the governing committee of the World Heritage Convention have taken up on their own initiative a proposal to restrict mining worldwide - in essence a no-mining policy to impose expansive new buffer zones for its already protected sites and, possibly, buffer zones for the buffer zones in ripples and waves of outward expansion as whim dictates.

The World Heritage Convention is a treaty to which the U.S. is signatory. The convention and its governing committee and the bureaucratic apparatus through which it executes its functions are part of the United Nations' Educational, Scientific and Cultural Organization - called UNESCO.

The convention arose and was placed within UNESCO in large part through the activities of the International Union for the Conservation of Nature - called the IUCN.

In the formal bureaucratic apparatus of the convention the sponsoring body (the IUCN) also functions as the technical arm on natural sites of the governing committee - functions as the advisor and the evaluator of signatory compliance with the directives of the governing committee and the convention.

It is from and through the IUCN that the World Heritage Convention's no-mining policy arises.

In IUCN press releases the president of the union has referred to it as - and I quote directly - "the world's largest environmental organization." When a new director general was named in 1998 she promised to be "activist...to set milestones and accelerate concrete action."

The IUCN is a hybrid organization. Its practices, priorities and policies are set by representatives of many governments, many nature-oriented professional organizations, and much of what we have come to recognize as the professional green lobby - the so-called public interest groups that want to reorganize and reshape societies rather than protect the environment. The IUCN also sponsored the sustainable-development concept, which is embedded in the convention's proposal by indirect reference.

The posted criteria for membership in the IUCN say that members must prove to the IUCN the following - must prove!

- That their activities do not conflict with IUCN;
- That they share and support the objectives of the IUCN;
- That they have a substantial record of activity suitable to the IUCN;
- And that they have as a central purpose the achievement of IUCN's mission.

U.S. government participation in the IUCN is chiefly in the hands of the Department of the Interior.

Last July in Paris the meeting of the Bureau of the World Heritage Committee quietly put the policy on the agenda for the November-December meeting in Morocco of the governing body - did so with little discussion and minimal explanation.

Records say that in calling up the policy the chairman took note that mines are involved in several on-going disagreements between the convention's governing apparatus and nations that are signatory to the agreement. In general in these matters the committee is threatening to formally find the sites as "in danger" unless the member governments quash mines. The members insist the projects meet all environmental requirements and are no danger to the sites.

The report of the meeting says the purposes of the policy are as follows:

- To communicate to signatories a clear position;
- To give them a global framework of criteria and classification to use in assessing what kinds of additional land should be closed to mining;

- And to give them a system that focuses on area management rather than site protection.

They chose as the template, or "working document," for this the pre-existing standards and guidelines set down by a constituent body of the International Union for the Conservation of Nature - called the *Policy on Mining and Associated Activities in Relation to Protected Areas* of the World Commission on Protected Areas.

The World Heritage-IUCN no-mining policy deals with all activities of exploration and extraction "in and adjacent to" the areas, and holds that neither exploration nor extraction is compatible with management objectives in four of the proposal's six protected categories. It places severe limits on mining in the other two.

The working document says that mining and exploration should be "prohibited by law or other effective means" in each of the four forbidden categories. Keep in mind the phrase "other effective means" as it relates to mining in the United States. The testimony will return to it in a moment.

The Heritage bureau's report suggests the need for a policy was first mentioned in 1998.

Nevertheless, there was a World Heritage team involved in the Incident at Yellowstone National Park in 1995. This team used words, phrases and concepts from the policy in its public comments and findings. In this incident a company with valid permits and environmentally sound methods was coerced into giving up a plan to mine - to mine not in the park but at a site several miles removed from the park.

Documents of the IUCN suggest the guidelines, the categories and the criteria have been around at least since 1994.

The Yellowstone team from World Heritage had with it a representative of the IUCN. The committee was invited to investigate by a group of groups in the American green lobby. The invitation was extended by the National Parks and Conservation Association, the Natural Resources Defense Council, the World Wildlife Fund and others.

Coincidentally, the IUCN office for the U.S. lists among its participants the following: The National Parks and Conservation Association, the Natural Resources Defense Council, the World Wildlife Fund, the Environmental Defense Fund, the Sierra Club, the World Resources Institute and more than 25 others.

2. The Potential for Manipulation, Mischief and Mal-administration:

This policy arises from a world of facades, shadows and intellectual in-breeding. Competing requirements and contrary opinion are simply excluded from membership and participation as the right-thinkers, the true-believers and the enlightened design and impose from above the restrictions they want - do so where they want, do so when they want and do so without the inconvenience of due process.

Groups that want to set up a controversy and to build pressure for political change simply call in a so-called outside and objective authority such as the World Heritage Committee to evaluate whatever it is they don't like. Then the evaluation is made and the recommendations moved forward according to criteria that was profoundly influenced by those who called in the evaluators in the first place.

The circumstances and the participants suggest that one early use of a World Heritage no-mining policy

could be to bring increased and renewed pressure against the multiple-use policies of the United States government - that such capability could well be an unstated reason for, and goal of, this new policy.

Imagine some of the possible headlines - headlines such as:

- *World Heritage Body Condemns U.S. Land Policy;*
- *World Heritage Panel Says U.S. Fails to Meet Treaty Obligations;*
- *World Heritage Calls on Congress to Change U.S. Land Law;*
- *Congress Defies World Body to Help Special Interests;*
- *NRDC Says Heritage Report Shows U.S. Shirks Duty to Americans;*
- And so on and so on.

3. Has Anybody Asked the Secretary of the Interior What He Thinks?

Circumstances also suggest that in at least four instances since 1995 the Secretary or the Department could have made at least passing reference to these same guidelines in quashing by administrative action otherwise valid or previously permissible activity:

The instances are as follows:

- In 1996, in Utah, the Escalante Canyons Expropriation by the President;
- In 1997, in Georgia, the Okefenokee Intervention by the Secretary;
- In 1998, in Missouri, the Secretary's refusal-by-exhaustion of exploration permits in the vicinity of the Ozark River;
- And this year, in Washington, the Secretary has attempted to quash an otherwise valid mine by fostering a reinterpretation of the law and practice governing millsites.

How do these acts fit the IUCN categories and the 1997 United Nations List of Protected Areas as maintained by the World Conservation Monitoring Center? by the way, the center's web page says it was established by the IUCN, the World Wide Fund for Nature and the United Nations Environmental Program.

The center lists the Escalante Canyons area a category #3 natural monument, one that must be closed to exploration and mining by law or "other effective means." When it looked like mining might go forward, it was closed by executive order. Most effective.

The Okefenokee Swamp is both a federal wilderness and a wildlife refuge. In 1997 a company attempted to move ahead with plans to mine outside the park but near a boundary. The wilderness area is category #1 and the refuge category #3, both of which the IUCN says must be closed to exploration and mining by law or by "other effective means."

The IUCN's policy statement explains that: "The World Commission on Protected Areas...believes that

exploration and extraction of mineral resources are incompatible with the purposes of protected areas..."

The Secretary went suddenly to Georgia with the press in tow to personally scold and intimidate the proposers. Reports say he condemned the proposal as "not compatible" with the neighboring ecosystem. He promised an extensive and protracted regulatory and legal fight, which might qualify as another effective means.

The Okefenokee refuge also is on the list of nomination-ready World Heritage sites.

In Missouri a company sought permits to explore in the already-mined Mark Twain National Forest in the vicinity of the Ozark River. After interpretations and reinterpretations of law and policy, and involvement by the Secretary, the company gave up.

The Ozark is a category #3 national scenic river - prohibit "exploration and extraction" by law or "other effective means."

The State of Washington mine that is the focus of the millsite controversy is in a Congressional District that contains at least a dozen categorized places, many of them in the protect categories to be closed to exploration and mining by law or "other effective means."

However, the Secretary very well may not have known of the policy or the categories or the directive to forbid by law or by "other effective means."

It is an area into which Congress could constructively inquire - this and interactions and the functions involving IUCN and the Department of the Interior and its representations in behalf of the overall interests of the United States.

4. Due Process of What?...The Dangers of Single-Concern Policies:

The United States is a representative democracy. Through argument and discussion and hearings such as this where all with an interest are heard, we arrive at balanced policies based on the requirements of the Nation and the well-being of the people. The governed have the opportunity to give shape to their government.

The World Heritage apparatus is a non-representative authority and has but a single purpose. Its technical advisory body excludes all who don't agree. Such bodies are limited by the experts and the advocates of causes who guide them. Their world is self-limited. Their concerns, passions, beliefs, theories and, ultimately, whims predominate. They may have little working knowledge of other matters - knowledge or concern. They may scorn other matters.

Often dismissed as parochial in these circles are things such as jobs and economic stability and national security - the multitude of things that a representative government such as this one this must balance.

In the years that the IUCN policy and categories have existed, in the time they have been moving forward as a probable requirement of the World Heritage Convention, the U.S mining industry has been neither advised nor consulted nor offered the opportunity to participate:

- Not by the convention or the governing committee;

- Not by the committee's bureau or the affiliate IUCN;
- Not by the U.S. Department of State, which takes a bystander's role;
- And not by the U.S. Department of the Interior either as a result of U.S. participation in the convention's governing apparatus or its membership in the IUCN.

Yet the U.S. mining industry is the world's most efficient and the most technologically adept at environmental protection and remediation. We seek to make the industry even more adept at resolving concerns such as those professed by the World Heritage Convention through the Mining Industry of the Future program.

It is true that the World Heritage Convention cannot require compliance. It is equally true that many of the 33 members of the professional green lobby on the rolls of IUCN-US are likely to wage campaigns of pressure and opinion and, possibly, litigation to coerce acquiescence and compliance.

There are two chief dangers in the World Heritage proposal for the United States - the second flowing from the first.

The first is that such a policy may come to override the balance of representative government - that it will be made to be seen and to function as the following:

- As a *de facto* obligation of the Government of the United States - a moral obligation;
- As a policy, even though it has not been authorized by any act of the Congress of the United States;
- As a sanctioned regulatory practice, even though imposed in ways and by means that ignore the universally accepted practices of good government as set down in the Administrative Procedures Act;
- As the regulatory equivalent of a law even though there can be no proper judicial review or appeal as provided for by the Constitution;
- And, finally, that it will be used and abused in campaigns to nullify and override by intimidation and distortion of opinion the proper decisions of duly elected, representative governments - local, state, and federal.

The second danger is to economic stability and National Security if balance is overridden.

The U.S. contains a major portion of the world's mineable resources, a major portion of the world's natural sites with the World Heritage designation, and a major portion of the world's internationally categorized protected areas.

The U.S. mining industry is a major producer and a major participant in world markets for most of the material resources and the energy required to uphold modern life. In the world we are first, second, or third in production of nine important metals and 18 important minerals and coal. Coal delivers most of the nation's electric power. Low-cost electric power upholds U.S. competitiveness in the global economy. We are otherwise significant producers of many additional material resources.

The U.S. presence in world markets does much to keep those markets and the price of resources in balance,

especially energy markets. The balance is a function of both reserve position and industry capability.

There are 22 World Heritage sites in the U.S. and at least 65 more on the Department of the Interior's list of potential nominations. There are 1,800 sites covering 246,000 square miles in 48 states of the United States on the official list of classified, categorized and protected places. The list includes state and federal holdings. Only Rhode Island and Connecticut have no listings.

To compare: 426,000 square miles is a little more than the combined land area of Germany, Japan and the United Kingdom with Bosnia-Herzegovina and Croatia mixed in just to come close.

Much of America's reserves of metals and minerals and coal are in the West. So too are many of the listed Heritage sites, of the potential Heritage sites, and of the 1,800 categorized places.

The ultimate results of such a no-mining policy might well include:

- The needless removal of vast resources from public use and benefit - a crude kind of rationing;
- Higher prices than necessary for energy, for goods, and for services;
- Distortion of world markets for energy and important material resources;
- Strains on the national and global economic security;
- And increased demands for the commitment of U.S. National Security forces to keep world affairs stable.

To sum up: The World Heritage Committee's no-mining policy is an instrument for manipulation, mischief and mal-administration. It arises from cozy and closed relationships that usefully could be dragged into the light of day and thoroughly examined.

Until this moment this policy scarcely could have moved forward with less notice had stealth and stratagem been the principle implementing strategy of the proponents - whoever they are.

Chairman Cubin, members of the committee, for the public record, it is the belief of the National Mining Association that you have performed a public service of the first order by bringing to first public knowledge and open discussion a policy proposal of national and international importance.

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